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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,854	09/11/2003	Paul A. Frechette	LANC-8	5195
24222	7590	01/20/2006	EXAMINER	
MAINE & ASMUS 100 MAIN STREET P O BOX 3445 NASHUA, NH 03061-3445			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/658,854

Applicant(s)

FRECHETTE ET AL.

Examiner

Robert B. Harrell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20030911</u> . | 6) <input checked="" type="checkbox"/> Other: <u>see attached Office Action</u> .       |

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1. Claims 1-6 are presented for examination.
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks <sup>TM</sup>, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.
4. 35 U.S.C. 101 reads as follows:

***Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.***

5. **Claim 6 is rejected under 35 U.S.C. 101** because the claimed invention is directed to non-statutory subject matter since such reads on (encompass) printed matter as such lack being embodied on a computer readable storage medium ((In re Beauregard (CAFC) 35 USPQ2d 1383) and MPEP 2106).

6. The following is a quotation of the second paragraph of 35 U.S.C 112:

**The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.**

7. Claims 1-6 are rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

- a) "said physical address"—claim 1 (line 4);
- b) "the selective one of"—claim 1 (line 20);
- c) "the presence"—claim 1 (line 24);
- d) "local machine"—claim 6 (lines 1 and 4);
- e) "adapted to"—claim 1.

8. As to 7 (a-d) above, these are but a few examples of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single

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proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, these are but a few examples where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term and an indefiniteness if the two are one and the same or different (e.g., 7(d) above). Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as non-responsive. Nonetheless, should a response yield all claims allowable short *a few* cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

9. Per 7 (e) above, and any other claims over looked using the same, "adapted to" language suggests or makes optional but does not require steps to be performed nor limit a claim to a particular structure and thus does not limit the scope of a claim or claim limitation (see MPEP 2106 (II(C))). Therefore, the claim scope is open ended without meets and bounds and thus indefinite.

10. Claim 1 lines (8-9) recites a controller connected to said data multiplexer for selecting which port provides data flow to and from said main port. However, data can only flow through a multiplexer in one direction. Thus, it cannot be clearly understood what element is claimed in claim 1 (line 5).

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

**(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.**

**(b) the invention was patented or described in a printed publication in this or foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

12. **Claims 1-6 are rejected under 35 U.S.C. 102 (a)** as being anticipated by "Radiance 100 MBPS Redundant Interface Line Cards".

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13. Claims 1-6 are rejected under 35 U.S.C. 102 (b) as being anticipated by “Radiance 100 MBPS Redundant Interface Line Cards”.

14. Claims 1-6 are rejected under 35 U.S.C. 102 (a) as being anticipated by “Radiance 10 MBPS Redundant Interface Line Card”.

15. Claims 1-6 are rejected under 35 U.S.C. 102 (b) as being anticipated by “Radiance 10 MBPS Redundant Interface Line Card”.

16. These are four individual rejections based on two references Radiance 100 and Radiance 10. The variation between rejections under 35 U.S.C. 102(a) and 35 U.S.C. 102(b) is based on clarification of publication dates for each reference because:

a) Radiance 100 MBPS indicates a Copyright date ranging from 2001-2003. Unless evidence is provided to the contrary, the earliest date of 2001 will be assumed resulting in a rejection under 35 U.S.C. 102(b). For compact prosecution, a rejection under 35 U.S.C. 102(a) is based on a date of 2003 as further suggestive on page 28 “5660-000011 F 3/03” to be March 2003;

b) Radiance 10 MBPS indicates a Copyright date of 2002. Unless evidence is provided to the contrary, the earliest date of March of 2002, as suggestive on page 24 (bottom “5660-000020D 3/02”), will be assumed resulting in a rejection under 35 U.S.C. 102(b). For compact prosecution, a rejection under 35 U.S.C. 102(a) is based on a date of 2002 beyond that of the suggestive date March 2003 of page 24 and of September 11, 2002.

17. Since each of the references were Installation & User Guides for one or more products (i.e., the Redundant Interface Line Card(s)), the applicant is reminded of the duty to disclose those matters of sale of those products to at least one person of the public and/or use by at least one person of the public and/or written documents with dates critical under 35 U.S.C. 102(b) and/or 35 U.S.C. 102(a). Even if the public, or at least one person of the public, was unaware of the contents of any specific card, the issue of “public use” of the card under 102(b) must be visited (MPEP 2133). Specifically, the applicant is reminded of the duty to disclose when at least one of the cards was offered to at least one person of the public, sale or not, and/or what was used by at least one person of the public, and/or what was the structural and/or functional consistency of those cards.

18. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant’s attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of each reference is cited* and relied upon in this action as part of the substantial evidence of record for individual rejection under 35 U.S.C. 102(a) and 35 U.S.C. 102(b). Also, no temporal order was claimed for the acts and/or functions. And to the best examiner is able to understand the claimed invention, the following apply to each rejection under 35 U.S.C. 102, mentioned above, as enumerated below.

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19. Per claim 1, 10MBPS taught a network interface (see page 19), comprising a plurality of physical ports (e.g., see page 6), including one primary (e.g., "PRIMARY port") and at least one secondary port (e.g., "SECONDARY port") and each providing corresponding activity status signals (e.g., see page 8 "activity detection is also required before the active port reverts back to PRIMARY" (in AUTO) and all of page 18)) and a main port (e.g., see page 6 "MAIN port") having said physical address (e.g., see page 6); a data multiplexer (e.g., see page 12 (figure (tri-state logic))) connected to said plurality of physical ports for selectively providing a data flow between said main port and a selected one of said primary and secondary ports according to a control signal (e.g., see figure on page 19), and a controller connected to said data multiplexer for selecting which port provides data flow to and from said main port (e.g., see "PC running Network Management Software" on page 19), further including a management control adapted to receive control signals from a host machine and including a timer for providing an output signal at an interval programmable according to said host machine control signals (e.g., see "PC running Network Management Software" on page 19) a link activity detector connected to receive said primary and secondary port activity status signals and provide a corresponding signal to said management control (e.g., see page 5 ("Immediate switching from the primary to the secondary link if the primary link fails:")), wherein said management control timer is further responsive to the selective one of said primary and secondary port activity status signals to begin a programmed interval (e.g., page 8 "(2) seconds"), and said management control further includes logic means to provide said multiplexer control signal upon receipt of said timer output signal and the presence of data activity of a non-selected port, whereupon said multiplexer provides connection between said main port and said non-selected port (e.g., page 8 "The active port reverts back to the PRIMARY if the SECONDARY port has no link or a loss of activity for two (2) seconds").

20. Per claim 2, claim 3, claim 4, and claim 5, the figure on page 12 of 10MBPS shows an operator host machine for communicating with said management logic as a PC running Network Management Software that included applets and GUI per page 5 (third paragraph); while, two (2) seconds fell within the claimed range.

21. Per claim 6, such was software equivalent given above and is thus falls for the reasons given above.

22. Per claims 1-6 are anticipated by Radiance 100MBPS as this reference also taught the correspondingly rejected claims given above with a similar and additional disclosure, and are thus rejected for the same reasons given above.

23. A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The

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examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

26. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

A handwritten signature in black ink, appearing to read 'R. B. Harrell', is positioned above the printed name.

ROBERT B. HARRELL  
PRIMARY EXAMINER  
GROUP 2142